

VETERANS DAY BRINGS NEW RIGHTS TO ARMY SPOUSES:
How the Military Spouses Residency Relief Act Applies to You

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This year, Veterans Day came with more than just the usual fanfare and ceremonies. President Barack Obama signed the Military Spouses Residency Relief Act (MSRRA) into law.

The “new” law is actually an amendment of an old law, the Servicemembers Civil Relief Act (SCRA). What the new law does is expand to spouses some of the SCRA rights traditionally held only by military members.

If you have served in the military or been married to a military member for any length of time, you are probably already aware of some of the benefits of the SCRA. One of the benefits military members received under the SCRA was that they did not lose their state of residency for tax purposes merely due to relocating pursuant to military orders. The purpose of the MSRRA is to extend that protection to military spouses under certain circumstances.

In his November 11 statement, President Obama acknowledged that, previously, military spouses were often disadvantaged by not being able to claim a home state for tax purposes. Furthermore, the President stated that, “When the military orders Servicemembers to move, spouses who move with them often have to pay taxes in a new State or locality and lose the right to vote in the place considered to be home. This legislation will alleviate these and other burdens on our military families.”

How does the MSRRA intend to alleviate these burdens for you and your military family? Perhaps this question is best answered by pointing out what the law does not do, since much of the news and media coverage of this issue can be misleading.

For example, the MSRRA does not exempt a Soldier or Soldier's spouse from complying with a state's drivers license requirements.

Additionally, the MSRRA does not simply allow a Soldier's spouse to pick and choose a legal domicile in any state just to avoid paying income taxes in another. This is true for two reasons. First, the amended statute only applies if the residence or domicile of the spouse is the same as that of the Soldier. Second, the residence or domicile must be established; it is not simply chosen.

The first requirement is fairly straightforward. For the MSRRA to apply, the spouse must have moved pursuant to the military member's PCS orders and the spouse's residence must be the same as the military member's.

Establishing residency can be more difficult to do, however. Your legal residence is the place where you have your permanent home to which, whenever you are absent, you have the intention to return. In order to establish residency in a state, you have to be physically present in a state and intend to make it your home.

Given these requirements, let's look at an example of how MSRRA works. Say that a Soldier is a legal resident of Kentucky. He lives here with his wife, who works here, votes here, and pays taxes here. The Soldier gets PCS orders to move to California and his wife goes with him and gets a job in that state.

Under the old reading of the SCRA, only the Soldier could claim Kentucky as his legal state of residence for state income tax purposes; his wife could not. If she worked in California, she would have had to pay California state tax.

Under the MSRRA, the wife gets the same benefit of claiming Kentucky as her state of residence as her military husband can under the SCRA. In this situation, the residence of the spouse is the same as that of the Soldier, both requirements are met, and the MSRRA applies.

The MSRRA is effective for tax year 2009, but since it was passed so late in the tax year, the state forms for 2009 have already been prepared and do not reflect the change. If you think this new law applies to you, be prepared to be questioned about your residency status when you file your 2009 taxes.

If you have any questions about the new law, please feel free to contact the Fort Knox Legal Assistance Office at (502) 624-2771 or visit our website at http://www.knox.army.mil/center/sja/legal_assistance.asp. Additionally, the Fort Knox Tax Center will open on January 25 and can advise taxpayers on the new law. You can call the Tax Center at (502) 624-2044 after January 19 to schedule an appointment.